

JUL 13 1978

KIRSCH ARAK AND BULMASH  
280 So. Beverly Drive  
Suite 300  
Beverly Hills, CA 90212  
(213) 278-9250

FILE  
Robert A. Zimmelt, Clerk  
JUL 12 1978  
A. ZMM, Deputy.

Attorneys for Defendant  
CIRCLE INTERNATIONAL CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

GREMLIN INDUSTRIES,  
a Delaware corporation,  
  
Plaintiff,  
  
vs.  
  
CIRCLE INTERNATIONAL CO.,  
INC., etc. et al.,  
  
Defendants.

CASE NO. 416704

NOTICE OF MOTION AND MOTION  
FOR CHANGE OF VENUE; FOR COSTS  
AND ATTORNEYS' FEES; POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF; AFFIDAVIT OF MERITS  
IN SUPPORT THEREOF; DECLARATIONS  
OF RICHARD J. GREENE AND DEAN  
McMURDIE IN SUPPORT THEREOF

Date: August 24, 1978  
Time: 1:30 P.M.  
Place: Department 4

TO: Plaintiff, GREMLIN INDUSTRIES, INC., and to its  
attorney of record, Ernest Borunda, Esq.:

PLEASE TAKE NOTICE that on August 24, 1978, at 1:30 P.M.  
or as soon thereafter as the matter may be heard in Dept. 4  
of the above-entitled Court, located at 220 W. Broadway, San  
Diego, California, Defendant CIRCLE INTERNATIONAL CO., will  
move the Court for an Order Changing Venue for the trial of  
this action to the Los Angeles Superior Court, Central District,  
located at 111 North Hill Street, Los Angeles, California.

This Motion will be made on the grounds that the Court

CHANGE OF VENUE

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TELEPHONE (213) 278-9250

LAW OFFICES  
KIRSCH, ARAK AND BULMASH  
280 SOUTH BEVELLY DRIVE, SUITE 400  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (818) 878-9180

1 designated on the Complaint on file herein is not the proper  
2 Court for the trial of this action, thus requiring that the  
3 matter be transferred to the Los Angeles County Superior Court,  
4 Central District.

5 This Motion will be based on this Notice of Motion,  
6 the Memorandum of Points and Authorities filed herewith, the  
7 Affidavit of Merits filed in support hereof, the Declarations  
8 filed in support thereof, and such further documentary and/or  
9 oral evidence as the Court may receive at the time of hearing  
10 on this Motion.

11 Defendant CIRCLE INTERNATIONAL CO. will also move  
12 the Court for an Order for costs and attorneys' fees incurred in  
13 making this Motion, pursuant to the provisions of California Code  
14 of Civil Procedure Section 396(b).

15 Dated: June 28, 1978

KIRSCH ARAK AND BULMASH

16  
17 By: Richard J. Greene  
18 RICHARD J. GREENE, Attorneys  
19 for Defendant CIRCLE INTERNATIONAL  
20  
21  
22  
23  
24  
25  
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28

AFFIDAVIT OF MERITS

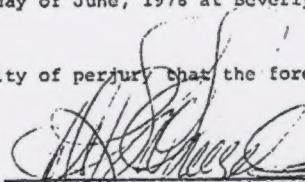
I, DEAN McMURDIE, declare and state:

1. That I am the President of Circle International Co., the Defendant in the above-entitled and numbered action. That as to the following facts I know them to be true of my own personal knowledge and if called and sworn as a witness in this matter, I could and would competently testify thereto.

2. That I have fully and thoroughly stated the case regarding this action and all facts and circumstances connected to it to my counsel, Kirsch Arak and Bulmash who are licensed and practicing attorneys, admitted to practice before all of the Courts of the State of California; and after such statement I am advised by such counsel, and truly believe, that I have a good and valid defense on the merits to the allegations set forth in the Complaint on file herein.

Executed this 29<sup>th</sup> day of June, 1978 at Beverly Hills, California.

I declare under penalty of perjury that the foregoing is true and correct.

  
DEAN McMURDIE, Declarant

LAW OFFICE  
KIRSCH, ARAK AND BULMASH  
280 SOUTH WEST 10TH STREET, SUITE 200  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (310) 378-9280



POINTS AND AUTHORITIES

Defendant, CIRCLE INTERNATIONAL COMPANY, submits the following Points and Authorities in Support of its Motion:

1. THE CONTROVERSY HEREIN CENTERS AROUND AN ORAL CONTRACT FOR THE PURCHASE AND SALE OF GOODS AND AS SUCH, THE PROPER VENUE IS IN THE COUNTY WHERE THE LAST ACT NECESSARY TO EFFECTUATE THE CONTRACT TOOK PLACE.  
Bank of Yolo vs. Sperry Flower Co. 141 Cal. 314 (1903);  
Pacific Airlines vs. Superior Court, 231 Cal. App. 2d 587, (1965);  
Witkin, California Procedure, Section Edition, Actions Section 478.

Although Plaintiff has employed the tactic of pleading its Complaint in common counts, which provides the Court with the least possible information regarding the circumstances surrounding the controversy between the parties, it becomes apparent that one party cannot become obligated to another upon an open book account, account stated, or any other theory, unless some type of agreement is the underlying transaction. The agreement in the case at bar is an oral contract for the purchase and sale of goods.

The Complaint, at Paragraph 3 thereof, alleges only that the obligation was payable in San Diego. However, not only

1 is this less than dispositive as to where payment is made, it  
2 fails to take into account that the underlying transaction being  
3 an oral contract for the purchase of goods, venue would be proper  
4 at the place where the last act necessary for the effectiveness  
5 of the contract took place. As appears with more particularity  
6 in the Declaration of Dean McMurdie filed in support of this  
7 Motion, the vast majority of goods shipped by GREMLIN to CIRCLE  
8 were shipped freight collect, to be accepted and with freight  
9 charges paid in Los Angeles County, California.

10 In discussing and deciding that the Court must inquire  
11 into the nature of the action, the Pacific Airlines Court, at  
12 page 590 of its opinion held:

13 "The true rule is that in venue  
14 matters, we look to the Complaint  
15 to determine the nature of the  
16 action..."

17 Here, however, Plaintiff has employed the method of  
18 pleading which gives the Court the least information. However,  
19 as Plaintiff well knows, the vast majority of the goods shipped  
20 to CIRCLE required acceptance by CIRCLE paying the freight  
21 charges in Los Angeles County, California, thus finalizing the  
22 acceptance of delivery of the goods and thus being the last act  
23 necessary to effectuate the oral agreement to purchase.

24 While Plaintiff may argue that California Civil Code  
25 Section 1489 takes cognizance that an offer of performance may be  
26 made to the creditor where he resides, said Section provides  
27 that this is done at the option of the debtor. There is no  
28 allegation in the Complaint supportive of such theory.

1 Professor Witkin, supra, at page 1302 of this Procedure  
2 Treatise, further verifies that the Court must seek the intention  
3 of the parties in the circumstances.

4 As the Declaration of Dean McMurdie filed in support  
5 of this Motion will show, the intentions of the parties was that  
6 the goods be accepted and freight charges paid in Los Angeles  
7 County, thus finalizing and effectuating the contract at that  
8 location. In fact, Plaintiff's own invoices are illustrative  
9 of the fact that the vast majority of shipments were freight  
10 collect.

- 11  
12 2. ON A MOTION FOR CHANGE OF VENUE BY  
13 A CORPORATE DEFENDANT SUED IN A  
14 COUNTY OTHER THAN WHERE ITS PRINCIPAL  
15 PLACE OF BUSINESS IS LOCATED, THE  
16 BURDEN IS ON PLAINTIFF TO ESTABLISH  
17 THE PROPRIETY OF VENUE IN THE COURT  
18 WHERE THE SUIT WAS FILED.  
19 Meyer vs. Burdett Oxygen Co., 170 Cal. App. 2d  
20 519 (1959).

21  
22 While Plaintiff may argue that the rules for venue as  
23 concerns corporate defendants are more broad than those pertaining  
24 to an individual defendant, the law specifically provides that  
25 such theory is tempered by a shifting of the burden to Plaintiff  
26 to establish the propriety of venue. Or, to put it as the Meyer  
27 Court did, at page 523 of its opinion:

28 //



"The general rule is that where an action is brought against a corporation in a county other than where its principal place of business is located, the burden is on the plaintiff, on an application for change of venue, to show that the contract was made, or was to be performed, or that the obligation arose, or that the breach occurred in the County where the suit was brought. (Hammond vs. Ocean Shore Development Co. 22, Cal. App. 167...)"

[Emphasis added]

Here, Plaintiff has used the barest venue allegation possible and provided the Court with the least amount of information concerning the facts of the underlying transaction between the parties. It is therefore submitted that Plaintiff has totally failed to establish venue in San Diego County.

3. COSTS OF MAKING A MOTION FOR CHANGE OF VENUE AND ATTORNEYS FEES' INCURRED ARE RECOVERABLE AND SHOULD BE AWARDED TO DEFENDANT.

California Code of Civil Procedure, Section 396(b)

The above-cited statute provides in pertinent part:

"...the court may order the payment to the prevailing party of reasonable

1 expenses and attorneys' fees incurred  
2 in making or resisting such motion  
3 whether or not such party is otherwise  
4 entitled to recover its costs of  
5 action. In determining whether such  
6 order for expenses or fees shall be  
7 made, the court shall take into consid-  
8 eration (1) whether an offer to stipulate  
9 to change of venue was reasonably made  
10 and rejected, and (2) whether such motion  
11 or selection of venue was made in good  
12 faith given the facts and law the  
13 party making the Motion or selecting  
14 the venue knew, or should have known."

15 As will appear with more particularity in the Declaration  
16 of Richard J. Greene filed in support hereof, an offer for  
17 stipulated change of venue was made, but rejected by Plaintiff's  
18 counsel. It is therefore submitted that the costs and attorneys'  
19 fees incurred by Defendant in making this Motion should be  
20 awarded by the Court.

21  
22 CONCLUSION

23  
24 Pursuant to the foregoing, it is submitted that  
25 Plaintiff, in framing its Complaint, has omitted to inform the  
26 Court of the facts of the underlying transaction, and specifically  
27 facts indicative that the last act necessary to effectuate an  
28 finalize its contract for sale and purchase of goods with



1 CIRCLE INTERNATIONAL COMPANY took place in Los Angeles County,  
2 California. Specifically, Plaintiff has failed to set forth  
3 the freight collect shipping terms and/or the fact that numerous  
4 invoices for goods were sent, along with the goods, cash on  
5 delivery. Thus, it is submitted that Defendant's Motion to Change  
6 Venue should be granted.

7 Dated: June 28, 1978

Respectfully submitted,

KIRSCH ARAK AND BULMASH

By: Richard J. Greene

RICHARD J. GREENE, Attorney  
for Defendant CIRCLE  
INTERNATIONAL COMPANY

LAW OFFICES  
KIRSCH, ARAK AND BULMASH  
280 SOUTH BEVERLY DRIVE, SUITE 200  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (213) 878-9280

DECLARATION OF DEAN McMURDIE

I, DEAN McMURDIE, declare:

1. That I am the President of CIRCLE INTERNATIONAL COMPANY, INC., a California corporation, and Defendant herein. That as to the following facts, I know them to be true of my own personal knowledge and if called and sworn as a witness in this matter, I could and would competently testify thereto.

2. That as President of CIRCLE INTERNATIONAL COMPANY, I am the person primarily in charge of all transactions with GREMLIN INDUSTRIES and have had dealings with GREMLIN INDUSTRIES, for in excess of five years. In fact, I was instrumental in the creation of GREMLIN INDUSTRIES from its inception and provided said entity with the funds with which to build their first line of products.

3. That at no time whatsoever, has CIRCLE INTERNATIONAL COMPANY ever agreed to an account stated with GREMLIN INDUSTRIES in the amount of \$89,640.70, or in any other amount whatsoever.

4. In fact, there has been a continuing dispute between CIRCLE INTERNATIONAL and GREMLIN INDUSTRIES regarding what amount, if any at all, is payable from CIRCLE INTERNATIONAL to GREMLIN INDUSTRIES. The reason for this is simply that a large majority of the goods shipped to CIRCLE INTERNATIONAL by GREMLIN INDUSTRIES were, and are, totally defective and unsuitable for resale or any use whatsoever. In fact, GREMLIN INDUSTRIES agreed to take back \$29,000.00 of goods which I personally arranged to have shipped back to them. However, despite promising to accept the returns, GREMLIN refused to accept delivery, thus

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SEVERELY HILLS, CALIF. 91342  
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KIRSCH, ARAK AND BULMASH  
2000 INTERNATIONAL BLVD. #200  
BEVERLY HILLS, CALIFORNIA 90210  
Telephone (818) 878-8880

1 causing substantial expense to be incurred by CIRCLE INTERNATIONAL.  
2 The minimum amount of defective merchandise is \$29,000.00 and  
3 GREMLIN INDUSTRIES was notified in each instance as defective  
4 merchandise was discovered and promptly on discovery of same.

5 5. In addition, numerous orders from GREMLIN INDUSTRIES  
6 were late, were invoiced as back orders without any prior notice  
7 that the order couldn't be filled, and/or were defective as  
8 described above. The result of all of this has been tremendous  
9 damage to CIRCLE INTERNATIONAL COMPANY in the form of cancellation  
10 of orders resulting in lost sales, loss of business due to  
11 customers going elsewhere for the reason that their orders  
12 were not filled on time, tremendous amounts of damages incurred  
13 by having to have CIRCLE INTERNATIONAL service department  
14 personnel work on the machines from GREMLIN in order to try and  
15 make the machines suitable for resale, and a loss of reputation  
16 and goodwill in the business community as a result of CIRCLE  
17 INTERNATIONAL not being able to live up to its obligations for  
18 delivery of merchandise all due to the failures of GREMLIN to  
19 properly perform its obligations to CIRCLE INTERNATIONAL.

20 6. The result of the foregoing is that CIRCLE has  
21 been damaged in an amount far in excess of the amount claimed  
22 due from CIRCLE by GREMLIN. While the exact amount of CIRCLE  
23 INTERNATIONAL's damages have not yet been ascertained, my years  
24 of experience as the President and Chief Administrative Officer  
25 of CIRCLE INTERNATIONAL COMPANY indicate to me that the loss of  
26 business by virtue of lost customers and lost sales for order  
27 cancellations, as well as the defective merchandise, which  
28 GREMLIN has refused to make good on, will total far in excess of



1 the amount sued for in the Complaint in this action.

2 7. Additionally, with regard to merchandise shipped  
3 to CIRCLE INTERNATIONAL by GREMLIN INDUSTRIES, the vast majority  
4 of said shipments were freight collect with the last act  
5 necessary for acceptance of the goods to take place in Los  
6 Angeles County, California, by CIRCLE INTERNATIONAL COMPANY  
7 paying the freight collect charges, thus finalizing each  
8 purchase transaction. Attached hereto collectively marked  
9 Exhibit "1" and incorporated herein by this reference as  
10 though set forth in full are true and correct copies of GREMLIN  
11 invoices to CIRCLE INTERNATIONAL in excess of \$50,000.00, all  
12 of which show on their face that the shipments were freight  
13 collect. These invoices are furnished for illustration only  
14 and do not reflect each and every transaction where GREMLIN  
15 sent freight collect shipments to CIRCLE INTERNATIONAL to be  
16 accepted as set forth hereinabove.

17 8. In addition, attached hereto marked collectively  
18 as Exhibit "2", and incorporated herein by this reference as  
19 though set forth in full are true and correct copies of numerous  
20 invoices from GREMLIN to CIRCLE INTERNATIONAL which were C.O.D  
21 (cash on delivery) with delivery and cash on delivery to take  
22 place in Los Angeles County, California. These items are included  
23 in the statement of account which Plaintiff has attached to its  
24 Complaint. However, these transactions are a further illustration  
25 of the fact that delivery and acceptance in Los Angeles County,  
26 California was the circumstance contemplated to finalize and  
27 effectuate each purchase transaction.

28 9. Furthermore, with regard to shipments received

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1 CIRCLE INTERNATIONAL COMPANY's receiving form specifically  
2 provides:

3 "All merchandise received subject to  
4 deduction for broken or missing parts."

5 What this simply means is that no transaction was  
6 to be finalized, nor the goods accepted until it was verified  
7 that said items were in proper order. Attached hereto marked  
8 Exhibit "3" is a true and correct copy of an exemplar of a  
9 CIRCLE INTERNATIONAL COMPANY receiving document.

10 10. Additionally, at no time whatsoever did CIRCLE  
11 INTERNATIONAL COMPANY, nor did I as President of CIRCLE INTERNATIONAL,  
12 instruct GREMLIN INDUSTRIES as to the method by which goods were  
13 to be shipped to CIRCLE and/or the name of, or type of, carrier  
14 to be used.

15 Executed this 29<sup>th</sup> day of June, 1978, at Beverly  
16 Hills, California.

17 I declare under penalty of perjury that the foregoing  
18 is true and correct.

19   
20 DEAN MCMURDIE, Declarant  
21  
22  
23  
24  
25  
26  
27  
28

ORIGINAL INVOICE

**Gremlin****Gremlin Industries, Inc.**

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

TO

SHIP TO

A0508  
CIRCLE, INTERNATIONAL  
2225 N. PICO BLVD

LOS ANGELES,

CA 90006

SEASON'S GREETINGS!

ATTENTION

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
27 JAN 78	27 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	1999981-1
PART NUMBER	QUANTITY		SHIP.	DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.				
712-0001	10	0	10	THIS IS A BACKORDER INVOICE		
				GAME TENPIN	1095.000	10950.00
				SHIP COLLECT		
				TOTAL		10950.00
<div data-bbox="129 901 352 1059" data-label="Text"> <p>RECEIVED 6/2/78 COLLECTED</p> </div> <div data-bbox="186 1065 528 1125" data-label="Text"> <p>(N) RI 17132-1/31/78</p> </div> <div data-bbox="379 958 581 1155" data-label="Text"> <p>Serial Numbers: 6022 6023 6024 6025 6026 6027 6028 6029 6030 6031</p> </div> <div data-bbox="600 960 777 1092" data-label="Text"> <p>104-A ✓</p> </div>						

EXHIBIT "1" PAGE 1 OF 1

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE



# Gremlin

**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 377-8700

ORIGINAL INVOICE

SOLD TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

SHIP TO

LOS ANGELES,

CA 90006

ATTENTION:

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
02 FEB 78	01 FEB 78	TRUCK	SAMPLES	FACT	NET 30	20494
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
715-0001	2	0	2	SAFARI	1395.000	2790.00
				SHIP COLLECT		
				TOTAL		2790.00
SN : 7020 7021						

104-A

(N) RD17146-2/3/78

104-124

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT

PAGE 2 OF 2

# Gremlin

ORIGINAL INVOICE

**Gremlin Industries, Inc.**

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLO TO

SHIP TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

ATTENTION:

LOS ANGELES,

CA 90006

SEASON'S GREETINGS!

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
09 JAN 78	06 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	19999
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	25	15	10	GAME TENPIN	1095.000	10950.00
				SHIP COLLECT		
				TOTAL		10950.00
SN 5848						
THRU						
5856						
5858						

61/37-A

104-A

(N) RD 17010 - 1/9/78

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT - 1 - PAGE 3 OF 7

ORIGINAL INVOICE

**Gremlin****Gremlin Industries, Inc.**

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

SHIP TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

SEASON'S GREETINGS I

ATTENTION:

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
13 JAN 78	12 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	1999981-1
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	15	10	5	THIS IS A BACKORDER INVOICE GAME TENRIN	1095.000	5475.00
				SHIP COLLECT		
				TOTAL		5475.00
O/N 8412 thru 8416  104-A (N) RD 170-36-1/1-1/76 1/10/78 1/10/78						

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT

PAGE 1 OF 1



ORIGINAL INVOICE

**Gremlin****Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

SHIP TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

ATTENTION:

03

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.S.	TERMS	INVOICE NO.
23 DEC 77	23 DEC 77	TRUCK	VERBAL/D.M.	FACT	NET 30	19998
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	10	0	10	GAME D/C	1195.000	11950.00
				SHIP COLLECT.		
				TOTAL		11950.00

Serial Numbers: 6650 through 6659

104-A

(N) RD 16975-12/27/77

ORIGINAL INVOICE

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

Gremlin

12401 Aara Drive, San Diego, California 92123

**Telephone: (714) 277-8700**

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

C.O.D. @ 150% OF PURCHASE

Ca 90006

03

SEASON'S GREETINGS!

PLEASE ADV THE LAB  
REPLYING IN THE ABOVE

ORIGINAL INVOICE

# Gremlin

**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 577-1700

ORIGINAL INVOICE

SOLD TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

SHIP TO

CUSTOMER PICK UP  
ROWE AUTOMATIC  
11/15/77-RECEIVED BY  
KEVIN DAVIS

CA 90006

ATTENTION:

01

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
16 NOV 77	15 NOV 77	OTHER	VERBAL	FACT	NET 30	19335
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
712-0001	1	0	1	GAME. TENPIN.	1095.000	1095.00
				S/N: 5502; RECEIVED PER RECEIPT # 133112		
				TOTAL		1095.00
<div>10/16/77</div> <div>(N) RD 16803 - 11/2/77</div> <div>PAID 10/11/77</div>						

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "1" PAGE 2 OF 2



# Gremlin

ORIGINAL INVOICE

**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLO TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

SHIP TO

POMONA VALLEY GOLF

1500 W. 7TH STREET  
UPLAND

CA 91786

SEASON'S GREETINGS!

ATTENTION:

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19727
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C	1195.000	1195.00
				SHIP C.O.D. AT 150% OF AMT. OF PURCHASE		
				TOTAL		1195.00
				SIN 6563		
				104-A		
				(N) RD 16966-12/23/77		

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT 2 PAGE 1 OF 1

ORIGINAL INVOICE

**Gremlin****Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

SHIP TO

GARDEN HEIGHTS MINIATURE GOLF  
8900 FLETCHER PARKWAY

ATTENTION: LOS ANGELES,

CA 90006

LA MESA

CA 92041

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
18 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19726
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C A	1195.000	1195.00
				SHIP C.O.D. AT 150% OF AMT. OF PURCHASE		
				TOTAL		1195.00

RECEIVED  
10/12/77  
FLETCHER

S/N 6564

104-A

(N) RD-16967-14/23/77

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "2"

PAGE

OF

4

# Gremlin

ORIGINAL INVOICE

**Gremlin Industries, Inc.**

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8750

SOLD TO

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

SHIP TO

S.O. MINIATURE GOLF  
1805 S. CLAIREMONT MESA BLVD.

SAN DIEGO

CA 92111

ATTENTION:

SEASON'S GR

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/ORN	FACT	NET 30	19728
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C	1195.000	1195.00
SHIP COD AT 150% OF AMT. OF PURCHASE					TOTAL	1195.00
S/N 6561				104-A		
(N) RD 16968-12/23/77						

10/14/33  
DOUGHERTY

ORIGINAL INVOICE

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

EXHIBIT 1 PAGE 3 OF 4

ORIGINAL INVOICE

**Gremlin****Gremlin Industries, Inc.**

2401 Aare Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO:

A0508  
CIRCLE INTERNATIONAL  
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

ATTENTION:

SHIP TO

FOUNTAIN VALLEY GOLF

50 FWY & MAGNOLIA AVENUE  
FOUNTAIN VALLEY, CA 92708  
SEASON'S GREETINGS!

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	19729
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.			
714-0001	1	0	1	GAME D/C A	\$195.000	\$195.00
				SHIP COD AT 150% AMT. OF PUR- CHASE		
				TOTAL		1195.00
				S/N-6562		
				104-A		
				(N) RD16969-12/23/77		

PLEASE PAY THE LAST  
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT "2" PAGE 4 OF 4



## RECEIVING DOCUMENT

LA # 17150

CIRCLE INTERNATIONAL CO.

DATE 2-7-78

Packed To

Equip. Card

Master Card

Cart. Card

Received from

Tennison Industries

San Diego, Calif.

QUANTITY	MANUFACTURER	DESCRIPTION	SERIAL NUMBERS		
6 Wm. Fr. 20/11		Muscle.	995+160	2222	1155.00
			800+160	2226	960.00
			995+160	2852	1155.00
			760+160	2771	860.00
			760+160	2774	860.00
			020+160	420	1085.00
		(N) Invoice 2	0766-2/7/78		

In Bill No. FB 507687

ALL MERCHANDISE RECEIVED SUBJECT TO DEDUCTION FOR BROKEN OR MISSING PARTS.

Freight Co. Calif. Cartage - \$121.25 Collect

RECEIVED BY

FILE COPY

EXHIBIT "3" PAGE 1 OF 1

DECLARATION OF RICHARD J. GREENE

I, RICHARD J. GREENE, declare:

1. That I am an attorney at law duly licensed to practice law before all of the Courts of the State of California, am an associate in the offices of Kirsch Arak and Bulmash and am one of the attorneys of record for CIRCLE INTERNATIONAL COMPANY, the Defendant herein.

2. That as to the following facts, I know them to be true of my own personal knowledge, and if called and sworn as a witness in this matter, could and would competently testify thereto.

3. That on or about June 1, 1978, I was consulted by Dean McMurdie, President of CIRCLE INTERNATIONAL COMPANY regarding the fact that he had been served with Complaint in the within action.

4. After discussing the facts of the case with Mr. McMurdie, I determined that venue should be in Los Angeles County, California and so informed Ernest Borunda, Esq., the attorney for Plaintiff. I did so on or about June 2, 1978 by sending Mr. Borunda a Stipulation to Change Venue. A true and correct copy is attached hereto marked Exhibit "1" and is incorporated herein by this reference as though set forth in full.

5. On or about June 14, 1978, I was informed by Mr. Borunda that the Stipulation was rejected and would not be signed by Plaintiff or Plaintiff's counsel.

6. That on June 26, 1978 and June 27, 1978, I traveled to San Diego and took the Depositions of Frank Fogelman

LAW OFFICE  
KIRSCH, ARAK AND BULMASH  
ATTORNEYS AT LAW  
10000 CRENSHAW ROAD  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (310) 878-8800

LAW OFFICES  
KIRSCH, NIKAN, AND BULLMASH  
180 SOUTH BROADWAY, SUITE 200  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (818) 276-9160

1 President of GREMLIN; Gene Candelore, Vice-President and General  
2 Manager of GREMLIN, Gerald Hansen, Senior Vice-President of GREMLIN;  
3 and Ray Foster, Vice-President and Treasurer of GREMLIN. Each and  
4 all of said individuals, during the testimony at their individual  
5 Depositions admitted that freight collect shipments to CIRCLE  
6 INTERNATIONAL resulted in freight charges being paid by CIRCLE  
7 at the point of delivery in Los Angeles County, California, and  
8 that with regard to cash on delivery shipments, both the freight  
9 charges and the payment of the order took place at point of  
10 delivery in Los Angeles County, California. Mr. Hansen and Mr.  
11 Foster contended that insofar as GREMLIN was concerned, the goods  
12 were the property of CIRCLE INTERNATIONAL in San Diego and that  
13 CIRCLE INTERNATIONAL instructed GREMLIN as to the manner of  
14 shipping, i.e., that the goods were shipped pursuant to CIRCLE's  
15 shipping instructions. However, neither Mr. Hansen or Mr. Foster  
16 could produce written shipping instructions from CIRCLE nor could  
17 they indicate the manner by which CIRCLE INTERNATIONAL supposedly  
18 gave verbal shipping instructions.

19 Executed this 21<sup>st</sup> day of June, 1978, at Beverly  
20 Hills, California.

21 I declare under penalty of perjury that the foregoing  
22 is true and correct.

23  
24 Richard J. Greene  
25 RICHARD J. GREENE, Declarant  
26  
27  
28

1 KIRSCH ARAK AND BULMASH  
2 280 So. Beverly Drive  
3 Suite 300  
4 Beverly Hills, CA 90212  
5 (213) 278-9250

6 Attorneys for Defendant  
7 CIRCLE INTERNATIONAL CO.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO

10

11 GREMLIN INDUSTRIES, INC., a )  
12 Delaware corporation, )  
13 Plaintiff, )  
14 vs. )  
15 CIRCLE INTERNATIONAL, a )  
16 California corporation, etc. )  
17 et al., )  
18 Defendants. )

CASE NO. 416704

STIPULATION FOR CHANGE OF VENUE;  
AND ORDER THEREON

LAW OFFICES  
KIRSCH, ARAK AND BULMASH  
280 SOUTH BEVERLY DRIVE, SUITE 300  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (213) 278-9250

18

19 IT IS HEREBY STIPULATED AND AGREED by and between  
20 Plaintiff GREMLIN INDUSTRIES, INC., a Delaware corporation and  
21 Defendant CIRCLE INTERNATIONAL CO., a California corporation  
22 (erroneously sued herein as CIRCLE INTERNATIONAL, a California  
23 corporation) by and through their respective attorneys of record  
24 that the within action be transferred to the Superior Court  
25 of the County of Los Angeles, Central District, 111 North  
26 Hill Street, Los Angeles, California;

27 IT IS FURTHER STIPULATED AND AGREED that Plaintiff shall  
28 bear all costs and fees for said transfer;



LAW OFFICES  
KIRSCH, ARAK AND BULMASH  
260 SOUTH BEVERLY DRIVE, SUITE 300  
BEVERLY HILLS, CALIFORNIA 90212  
TELEPHONE (213) 476-9250

1 IT IS FURTHER STIPULATED AND AGREED that pending transfer  
2 of the within action to the Los Angeles County Superior Court,  
3 Defendant CIRCLE INTERNATIONAL CO., a California corporation shall  
4 have an extension of time within which to file its responsive  
5 pleading to the Complaint on file herein to and including 30  
6 days after the Los Angeles Superior Court notifies all parties  
7 as to assignment of a Los Angeles Superior Court case number.

8 Dated: June , 1978

9  
10 ERNEST BORUNDA, ESQ. Attorney  
for Plaintiff

11  
12 Dated: June 3 , 1978

KIRSCH ARAK AND BULMASH

13  
14 By: Richard J. Greene  
15 RICHARD J. GREENE, Attorney  
16 for Defendant CIRCLE  
INTERNATIONAL CO.

17 ORDER

18 Pursuant to the foregoing Stipulation, and good  
19 cause appearing therefor:

20 IT IS SO ORDERED.

21  
22 Dated: June , 1978

23  
24 JUDGE OF THE SAN DIEGO SUPERIOR  
25 COURT